

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DEJUAN ANTHONY BYRD,
CARLOS ANTHONY BYRD, and SHAWN
KENNETH ROBINSON-BYRD, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

FELICIA MARIER BYRD,

Respondent-Appellant,

and

LAWRENCE HARRIS, JOHN MURRAY, and
SEAN ROBERTS,

Respondents.

Before: Meter, P.J., and Talbot and Owens, JJ.

PER CURIAM.

Respondent Felicia Byrd appeals as of right the final order of the Wayne Circuit Court, Family Division, terminating her parental rights to her three sons. We affirm.

Respondent challenges the trial court's order terminating her and the putative fathers' parental rights to DeJuan, Carlos, and Shawn pursuant to MCL 712A.19b(3)(a)(i), (c), (g), and (j). We review for clear error a trial court's findings regarding an order terminating parental rights. MCR 3.977(J). We also review for clear error "both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest." *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). "A trial court's decision to terminate parental rights is clearly erroneous if, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake had been made." *In re Gazella*, 264 Mich App 668, 672; 692 NW2d 708 (2005).

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“[MCL 712A.19b(5)] mandates termination once a petitioner establishes at least one statutory ground for termination under subsection [MCL 712A.19b(3)], unless the court finds that termination is clearly not in the child’s best interest.” *Trejo, supra* at 364-365. Accordingly, we must uphold the trial court’s order terminating respondent’s parental rights if petitioner has established at least one statutory ground for termination by clear and convincing evidence, unless termination is clearly not in the children’s best interest.

In its January 29, 2007, order terminating respondent’s and the putative fathers’ parental rights, the trial court did not distinguish the statutory grounds under which respondent’s parental rights were terminated from the statutory grounds under which the putative fathers’ rights were terminated. However, at the January 17, 2007, hearing, the trial court noted that it terminated respondent’s parental rights pursuant to MCL 712A.19b(3)(c), (g), and (j). Because the trial court did not terminate respondent’s parental rights pursuant to MCL 712A.19b(3)(a)(i), her argument on appeal that the trial court erred when it terminated her parental rights on this ground is without merit. Similarly, the trial court indicated that it terminated respondent’s parental rights pursuant to MCL 712A.19b(3)(c)(i), but not pursuant to MCL 712A.19b(3)(c)(ii). Accordingly, to the extent that respondent argues that the trial court should not have terminated her parental rights pursuant to MCL 712A.19b(3)(c)(ii), this argument is also without merit.

MCL 712A.19b(3) states:

(3) The court may terminate a parent’s parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.

Petitioner only petitioned to terminate respondent’s parental rights pursuant to MCL 712A.19b(3)(c)(i) and (g). At the termination hearing, petitioner raised for the first time after filing the June 9, 2006, petition the argument that the trial court could also terminate respondent’s parental rights pursuant to MCL 712A.19b(3)(j). Admittedly, respondent was not

given sufficient notice to defend herself against this charge. However, we need not consider whether termination of respondent's parental rights on this ground was appropriate because only one ground under MCL 712A.19b(3) need be established to terminate parental rights, MCL 712A.19b(5), and the trial court did not clearly err when it found that termination was proper under MCL 712A.19b(3)(c)(i) and (g).

At the time the trial court terminated respondent's parental rights, DeJuan and Carlos had been wards of the court for approximately four-and-a-half years, and Shawn had been a ward of the court for approximately 17 months. The trial court initially made DeJuan and Carlos temporary court wards in response to petitioner's concerns that respondent could not properly care for them. Shawn was made a ward of the court soon after his birth in response to petitioner's concerns that respondent still could not properly care for her children. In order to regain custody of her children, respondent was ordered to comply with the provisions of a treatment plan that, among other things, required her to demonstrate emotional well-being, maintain a family bond with the children, take and benefit from parenting classes, demonstrate an ability to provide for herself and the children, and maintain suitable housing. When petitioner filed the instant petition for termination of parental rights on June 9, 2006, respondent had yet to comply with these provisions of the treatment plan.

Between the time DeJuan and Carlos were made temporary court wards and when respondent's parental rights to her children were terminated, respondent lived a transient lifestyle, staying with friends, relatives, and in shelters. At times, respondent found rental housing, but she often moved soon thereafter because she could not pay the rent. Even if respondent made rent payments for a couple of months, she often lacked household necessities like beds and sheets and had trouble paying her utility bills. Respondent's only verified source of income came from monthly Supplemental Security Income payments, which was barely sufficient to cover her rent payments. Although respondent claimed that she had other sources of income, she provided no verification. Further, respondent failed to verify her claims that she prepared for and planned to take the General Educational Development examination.

Respondent also failed to establish a family bond with her sons. She missed 80 percent of the weekly visits available to her between 2002 and 2006. Although respondent attended parenting sessions in 2002 and 2003, she failed to benefit from these sessions. Further, respondent did not act on referrals to take additional parenting classes. Respondent often was overwhelmed during visits. She had difficulty dividing her time and attention among her children and became increasingly distracted as a visit progressed. At times, she talked on her cellular telephone or colored during a visit instead of interacting with her children. She became tense and frustrated when Shawn cried and had difficulty comforting him. If Shawn would cry at the beginning of a visit, she would tell the foster mother not to bring him in the visit room and would need to be convinced to visit with him.

In addition, respondent failed to consistently attend mental health therapy sessions. Although at the time of the January 2007 termination hearing respondent was taking medication for depression and a bipolar disorder, she admitted that she had not consistently taken her medication in the past year. Respondent also admitted to having used marijuana and alcohol in the past. Although in 2002 and 2003 respondent had to pass a weekly random drug screen in order to visit with her children, she still missed numerous drug screens.

The poor parenting skills, financial difficulties, and transient lifestyle that respondent exhibited when her children were made wards of the court continued to exist when the trial court terminated her parental rights. Respondent's failure to comply with the terms of her treatment plan for over four years supports the trial court's conclusion that no reasonable likelihood exists that respondent will rectify these conditions in a reasonable time period. Accordingly, the trial court did not clearly err when it terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i).

Further, respondent's failure to comply with the terms of her treatment plan supports both the trial court's conclusion that at the time her rights were terminated, respondent could not provide proper care and custody for her children and its conclusion that it could not reasonably expect that she could provide proper care and custody for her children within a reasonable time. Accordingly, the trial court did not clearly err when it terminated respondent's parental rights pursuant to MCL 712A.19b(3)(g).

The evidence also does not show that termination of respondent's parental rights is clearly contrary to the children's best interests. MCL 712A.19b(5) states:

If the court finds that there are grounds for termination of parental rights, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made, unless the court finds that termination of parental rights is clearly not in the child's best interests.

Testimony from foster care workers established that DeJuan and Carlos did not view respondent as their mother, but as a big sister. They would play with her or by themselves during supervised visits. In 2004, DeJuan would become distressed when his mother failed to visit, but by 2005, foster care workers noted that DeJuan did not appear affected when talking about respondent. Further, he would become disinterested in his mother by the end of a visit and would turn to his foster parents for affection. When asked, DeJuan indicated that he preferred to stay in his foster home and not return to respondent's care. Carlos consistently was indifferent to the presence of his mother and unaffected by her failure to visit. Shawn was made a temporary court ward soon after his birth and his foster families were his only caregivers. During her few visits with Shawn, respondent became tense and frustrated when he cried and did not know how to comfort him. Not only is respondent unable to care for her children, but the children also do not have a strong bond with her and appear happier in foster care. Accordingly, termination of respondent's parental rights is not contrary to the children's best interests.

Affirmed.

/s/ Patrick M. Meter
/s/ Michael J. Talbot
/s/ Donald S. Owens